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IN THE

Supreme Court of the United States

October Term—1948

No. 174

UNITED STATES OF AMERICA,

Petitioner,

—VS.—

REUBEN D. SILLIMAN,

Respondent.

**BRIEF FOR RESPONDENT IN OPPOSITION
TO PETITION**

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES
CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

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Opinions Below

The opinion (R. 1-19) of the Circuit Court of Appeals for the Third Circuit (hereinafter referred to as "the Third Circuit") is reported at 167 F. 2d 607 (1948). The opinion of the District Court for the District of New Jersey (Meaney, *D.J.*) denying the Respondent's motion for dismissal of the complaint and for summary judgment, and granting the Petitioner's motion to have certain defenses stricken (D. 117a-136a) is reported at 65 Fed. Supp. 665 (1946).

Questions Presented

Questions Presented by the Petitioner

The basic question presented by the Petitioner is whether the Final Decree of the Surrogate's Court, New York County, of the State of New York, in the Matter of the Judicial Settlement of the Account of Rodiek as Ancillary Executor of the Hackfeld Estate (D. 63a) constitutes *res judicata* in the instant case. In the Surrogate's Court proceeding, the Surrogate overruled objections of the Petitioner to the payment to the Respondent of fees for his services to the Hackfeld Estate, determining adversely to the Petitioner its charges of fraud, etc., which are identical with the charges made in this case.

The Petitioner had charged in its objections, in its attempt to obtain a money judgment by surcharging Respondent, that the Respondent had conspired with Hackfeld with the result that Hackfeld had received a greater portion of the proceeds of his property, which had been seized by the Alien Property Custodian, than Hackfeld was entitled to obtain. The present action is based on the very allegations which were overruled by the Surrogate when he adjudged the controversy in favor of the Respondent.

The Third Circuit held that the Final Decree of the Surrogate's Court constituted *res judicata* herein and ordered judgment for the Respondent (Opinion R. 8-17).

Additional Ground in Support of the Decision of the Third Circuit

The Third Circuit, as an additional ground for its judgment, held that the "full faith and credit" clause of the Constitution of the United States and Section 905 (28 USC 687) of the Revised Statutes compelled the District Court

to give the same faith and credit to the Final Decree of the Surrogate's Court as the Courts of New York would give it under New York law (R. 17-19). The Third Circuit further held that under New York law the determination of the non-existence of the alleged wrong by the Surrogate's Court in its Final Decree (R. 18) would be of conclusive effect in any other law suit in the Surrogate's Court or in any other court in the State of New York on the issue.

Other questions of importance were left undecided because the Third Circuit held that the *res judicata* decision was the end of the controversy

Having decided the case on the two above stated grounds, the Third Circuit held it unnecessary to pass on a number of other questions that it referred to in its opinion, saying, of one of them:

"One very important, and none too easy point, is whether the proof offered at this trial is sufficient to sustain the finding of the jury in favor of the plaintiff and the judgment entered thereon" (R. 19).

Statutes Involved

United States Constitution, Art. IV, Sec. 1, Rev. Stat. Sec. 905, 28 USC 687.

New York Constitution, Art. 6, Chap. 13.

New York Surrogate's Court Act, Sec. 282, Laws of N. Y. 1920, Chap. 928 as amended, L. 1931 Chap. 707, L. 1941 Chap. 129.

Surrogate's Court Act, Sec. 40, L. 1920 Chap. 928.

Surrogate's Court Act, Sec. 80, L. 1920 Chap. 928 as amended, L. 1938 Chap. 157.

Surrogate's Court Act, Sec. 288, L. 1920 Chap. 928 as amended, L. 1931 Chap. 707, L. 1941 Chap. 129.

Statement of the Case

The statement of facts in the Petition for Certiorari is distorted, biased and incomplete, and, in view of the Respondent, largely irrelevant to the consideration of the matter before this Court.

Petitioner is seeking to recover, as damages under the Settlement of the War Claims Act of March 10, 1928, 45 Stat. 254, on the theory that Hackfeld was a German and not an American citizen, a principal sum of \$910,376, or 20% of the amount returned to Hackfeld, plus interest at 6% from the date of receipt of payments (D. 20a).

The defendant is a lawyer of more than 50 years standing admitted to practice in this Court in 1902. It is alleged that he and Hackfeld sought to defraud the United States by claiming that Hackfeld was an American citizen in 1923 and 1924. It is the very charge made in the Surrogate's Court which was there determined against the Government.

At the conclusion of plaintiff's case in the District Court the Government counsel admitted that there had been no misrepresentation with respect to Hackfeld having become an American citizen by virtue of his Hawaiian certificate of December 21, 1894 and Section 4 of the Hawaiian Territorial Organic Act of April 30, 1900, 31 Stat. 141, 48 USC Sec. 678 (D. 390a-391a), which was the basis of Hackfeld's Alien Property Custodian Claim of 1923-1924 (D. 391a).

Proceeding in Surrogate's Court of New York

After this Court, equally divided (three of the justices, having been Attorneys General, disqualified themselves), affirmed without opinion (315 U. S. 783, 1941) the judgment of the District Court for the Southern District of New York against Rodiek as Hackfeld's executor, the Government's attorneys took the position in the Surrogate's Court that the entire fund in the hands of Rodiek as such Executor should be paid over to the Government as an equitable owner, and that the application of Rodiek for authority to pay reasonable expenses of administration should be denied.

Surrogate Foley held that the New York District Court judgment was for the recovery of money only and carried no determination of a lien upon the funds of the Hackfeld Estate, *Matter of Hackfeld*, 180 Misc. 406, and having permitted the Government to file objections to all claims of lawyers for compensation for services, and respondent having asked for additional fees for his services since the last preceding payment had been made (D. 73a), objections were filed by the Government to the payment of any additional compensation to Respondent, and it sought to surcharge the Respondent with \$66,904.41 previously paid him, alleging fraud and conspiracy between him and Hackfeld. Specifically, in Objection III, the Government objected generally to all disbursements and payments of fees to the Respondent and requested a surcharge against him for the said \$66,904.41, which he had previously received on orders of the Surrogate (D. 39a), on the same grounds alleged here.

At the trial of the objections, Respondent stated to the Surrogate that he had not charged any fees for services in connection with the Court of Claims proceeding. The Surrogate thereupon ruled, as stated by the Third Circuit:

"The Government withdrew Objection V and desisted in pressing II when it was informed that the fee allowance had nothing to do with the Court of Claims matter. But it continued to press Objection III" (Note 36, Opinion, R. 12).

The alleged "Excerpts" from the Surrogate's Court's minutes, set out in the Government's Appendix to its Petition for Rehearing in the Third Circuit had to do with Objection II. But the Government did not withdraw Objection III, at the trial in the Surrogate's Court, but sought to have the Surrogate rule on it (G. R. 2a).

The Government's Objection III reads in part:

"III. Objects generally to all disbursements and payments of fees to Reuben D. Silliman and requests a surcharge against him of all sums heretofore received by him from the estate upon the ground (asserted upon information and belief) that he, as attorney for the decedent, Johann Friedrich Hackfeld, personally participated in the filing and prosecution of the false and fraudulent claim against the United States in 1923 and 1924 with full knowledge of its falsity; that said Reuben D. Silliman brought about the illegal and erroneous transfer and payment to the decedent largely by causing the payment by the decedent of money to a vice consul of the United States charged with making recommendations to the Secretary of State on the decedent's citizenship, and by personally bribing said vice consul who reported favorably on an application of the decedent for an American passport which was obtained as a means of inducing favorable consideration by officials of the United States of the decedent's notice of claim as an American citizen under section 9 of the Trading

With the Enemy Act; that said Reuben D. Silliman was and is primarily responsible for the prosecution of the proceeding in the United States Court of Claims referred to in paragraph II, *supra*, and that he accepted payment of all of said fees and disbursements with knowledge of the insubstantial, speculative and fraudulent nature of the claim asserted against the United States in the Court of Claims. * * *

(Set out in full as a footnote in opinion, R. 12.)

Counsel for the Government, in response to a question of the Surrogate, at the opening of the trial, stated that the Government was "urging Objection III (D. 108a-109a) but the Government failed to produce sufficient proof to establish the objection. The Surrogate had before him at the hearing two volumes of the trial record in *United States v. Rodiek*, 117 Fed. 2nd 588 tried in the District Court for the Southern District of New York, which contained evidence relating to the issues of fraud and conspiracy, an affidavit of respondent, sworn to before the Surrogate at trial, under the practice of the Surrogate's Court and Respondent was cross examined by Government Counsel.

The Final Decree of the Surrogate, in overruling the objection, recites and determines the issue as follows:

"Having objected generally to all disbursements and payments of fees to Reuben D. Silliman and requested a surcharge against him for all sums heretofore received by him from the estate upon the ground (alleged upon alleged information and belief) that said Reuben D. Silliman, as attorney for the decedent herein, had personally participated in the filing and prosecution of the alleged false and fraudulent claim against the United States for the return of Hackfeld's property in

1923 and 1924, with alleged knowledge of its alleged falsity, and had brought about the alleged illegal and erroneous transfer and payment to the decedent by the United States of America, by allegedly causing the decedent to pay money to a Vice Consul of the United States of America and (as alleged) personally paying money to said Vice Consul and (as alleged) that said Reuben D. Silliman should have ceased serving as attorney for the Ancillary Executor at the time when (as it is alleged) the United States produced evidence showing that Reuben D. Silliman had been party to the alleged payment of money to the American Consular Officer (General Objection 'III'); * * * (D. 69a-70a)

"The United States of America having specifically prayed in its aforesaid objections that said Reuben D. Silliman be required, pursuant to the provisions of Section 231-A of the Surrogate's Court Act, to refund to the estate the sum of \$66,904.41 representing legal fees and expenses theretofore paid to him and such other sums paid to him by the Ancillary Executor for fees or expenses as the Court might find to be neither reasonable, necessary or proper, * * * (D. 71a)

"The proceedings having duly come on to be heard (D. 72a) * * *

"* * * and the issues raised by the remaining Objections having been fully heard and tried by the Surrogate; and

"The Surrogate having rendered and filed his decision herein dated the 9th day of December, 1943;

"Now, upon all the proceedings heretofore and here and due deliberation having been had (D. 75a) * * *

"It further appearing to my satisfaction that Reuben D. Silliman, as attorney for Frederick Rodiek, The Ancillary Executor herein, has rendered services for and in behalf of said Ancillary Executor and the estate herein for a period of approximately eleven years, which included the participation in complicated litigation in the courts of the United States, and that such services benefited the estate and were and are of the fair and reasonable value of the sum of \$58,500, and that the Ancillary Executor has paid to said Reuben D. Silliman \$48,500 on account of said services, and that Reuben D. Silliman has personally disbursed moneys in behalf of the estate herein during the period from November 5th, 1938, to June 1st, 1942, and that a balance of \$1,892.85 remains unrepaid to him therefor, it is further

"ORDERED, ADJUDGED AND DECREED that the balance of compensation due to said Reuben D. Silliman for all services rendered by him as attorney for the Ancillary Executor herein down to the date of this decree, be and the same hereby is fixed and allowed in the sum of \$10,000., which sum is presently due and owing to him from the estate for services rendered, and further that Reuben D. Silliman be and he hereby is allowed the balance of his disbursements in behalf of said Estate in the said sum of \$1,892.85; and it is further

"ORDERED, ADJUDGED AND DECREED that all objections of the United States of America, the objectant herein, to the payment of attorney's fees and disbursements to Reuben D. Silliman and the request of the United State of America that said Reuben D. Silliman restore to the estate all moneys heretofore paid to him from the estate as and for attorney's fees and disburse-

ments, as prayed for in its written objections and as asserted upon the trial of the issues herein, be and the same hereby are in all respects overruled and denied; * * * " (D. 76a-77a).

An affidavit of James F. Donnelly, filed in the District Court on the motion to dismiss the complaint (R. 95a-112a), sets forth in detail the pertinent occurrences in the proceedings before the Surrogate's Court which resulted in the Final Decree of that Court and shows that the matter is *res judicata*, of the controverted issue, under New York law.

The Government took no appeal (D. 59a-60a). Pursuant to the terms of the Final Decree, the Government received more than \$1,000,000 (G. 1).

The Statute conferring jurisdiction on the Surrogate's Court of New York County may be found in the Surrogate's Court Act. It is contained in *Clevenger's Practice Manual* and is also quoted by the Third Circuit in its opinion (footnote 43, R. 15).

Section 40 of said Act reads:

"General jurisdiction of surrogate's court.

"Each surrogate must hold, within his county, a court, which has, in addition to the powers conferred upon it, or upon the surrogate, by special provision of law, jurisdiction, as follows:

"To administer justice in all matters relating to the affairs of decedents, and upon the return of any process to try and determine all questions, legal or equitable, arising between any or all of the parties to any proceeding, or between any party and any other person having any claim or interest therein who voluntarily

appears in such proceeding, or is brought in by supplemental citation, as to any and all matters necessary to be determined in order to make a full, equitable and complete disposition of the matter by such order or decree as justice requires. * * *

Surrogate's Court Act, L. 1920, Ch. 928, quoted in note 43, opinion of Third Circuit (R. 15).

While Section 80 reads :

"Force and effect of a decree of surrogate's court.

"Every decree of a surrogate's court is conclusive as to all matters embraced therein against every person of whom jurisdiction was obtained. To such decree there is attached all the presumptions pertaining to a judgment rendered by a court of general jurisdiction in a common law action."

Surrogate's Court Act, L. 1920, Ch. 928 as amended L. 1938, Ch. 157, also quoted (R. 16).

The decisions of the New York courts, construing the Act, establish the full scope and conclusive effect of a New York Surrogate's Court decree. Of these we cite the following:

Matter of Trowbridge, 266 N. Y. 283, 288, 194 N. E. 756;

Matter of Raymond v. Davis, 248 N. Y. 67, 71-72, 161 N. E. 421;

In Re Deutsche Estate, 186 Misc. 446, 56 N. Y. Supp. (2d) 768;

Matter of Morris, 134 Misc. 374, 235 N. Y. Supp. 461;

Matter of Emmerich, 175 Misc. 228, 23 N. Y. Supp. (2d) 42;
Matter of Rogers, 168 Misc. 633, 641, 6 N. Y. Supp. (2d) 255;
Matter of Halsted's Estate, 172 Misc. 632, 15 N. Y. Supp. (2d) 862;
Matter of Smith, 259 App. Div. 63, 67, 18 N. Y. Supp. (2d) 381;
Matter of Bird, 166 Misc. 786, 790, 2 N. Y. Supp. (2d) 532;
Matter of Potts, 213 App. Div. 59, 63, 209 N. Y. Supp. 655.

The Third Circuit also pointed out that the District Judge stated with regard to the allegations before the Surrogate's Court:

"The allegations contained in the objections" (of the Government in the Surrogate's Court) "and those set forth in the amended complaint" (in this case) "are unquestionably grounded on the same alleged facts and evidence" (R. 14).

The Third Circuit proceeded to state that:

"We think the District Judge was right in the statement of fact above quoted. The objections were certainly there before the Surrogate. He set them up one by one in his elaborate order and then proceeded to disallow them" (R. 14).

The Third Circuit concluded,

"This is not a situation where the record is devoid of information and needs outside evidence to explain what went on (before the Surrogate's Court)" (R. 15).

Summary of Argument

1. The Third Circuit was correct in holding that the Final Decree of the Surrogate's Court constitutes *res judicata* to this action.

2. The decision of the Third Circuit is not in conflict with the decision of the Circuit Court of Appeals for the Second Circuit in *Rodiek v. Commissioner*, 33 BTA 1020, affirmed *sub. nom*; *Rodiek v. Helvering*, 87 F. 2d 329.

3. The decision of the Third Circuit conforms to the settled law of New York on the jurisdiction of the Surrogate's Court and the finality of its decrees.

4. The Third Circuit was correct in holding that under the "full faith and credit" clause of the Constitution of the United States and Section 905 (28 USC 687) of the Revised Statutes the determination of the non-existence of fraud by the Surrogate's Court was of conclusive effect.

ARGUMENT

1. The Respondent's argument in support of its claim that the Final Decree does not constitute *res judicata* in respect of the issue of the truth of the allegations of fraud overlooks entirely the facts set forth in this brief under the heading "Statement of the Case."

Objection III filed by the Government in the Surrogate's Court in opposition to the application of the Respondent for an allowance of fees for his services to the Hackfeld Estate explicitly charges the Respondent with participation in the filing and prosecution of the alleged false and fraudu-

lent claim against the Government for the return of Hackfeld's property in 1923 and 1924, and with participation in alleged bribery. Objection III not only sought to prevent the payment of further fees to the Respondent, but requested that the Respondent be surcharged to the extent of fees he had previously received. It sought an affirmative decree for the recovery of money from the Respondent on the issue of fraud and conspiracy. Section 231-a, as amended, of the Surrogate's Court Act of the State of New York expressly empowers the Surrogate "to try and determine all questions, legal or equitable, between any or all of the parties to any proceedings". Both the Government and the Respondent were parties to the Surrogate's Court proceeding and the Government raised the same issue of fraud and conspiracy therein.

In reply to a direct question of the Surrogate, counsel for the Government informed the Surrogate that the Government pressed its Objection III. Counsel for the Government never changed this position with respect to Objection III.

The record in the Surrogate's Court was replete with reference to the fraud charge. The Surrogate expressly overruled Objection III charging fraud and bribery and all objections to the payment of attorney's fees and disbursements to the Respondent, and the Surrogate overruled the request of the Government that the Respondent be surcharged to the extent of all moneys paid to him from the Estate as attorney's fees and disbursements and allowed an additional \$10,000 for services. The Government requested the Surrogate to modify the Final Decree by the insertion of a statement to the effect that the charges of fraud were not determined by the Surrogate and the Surrogate refused such a modification of his decree (D. 109a-110a). The Third Circuit commented on this, that nowhere in the Record does the Government deny it (R. 13).

The "Excerpt from the Stenographer's Minutes of the New York Surrogate's Proceeding", which is set forth in Appendix A to the Petition for Rehearing filed with the Third Circuit, was not part of the Record before the District Court herein.

After the decision of the Third Circuit, the Petitioner filed a Petition for Rehearing annexing the said Appendix. This was not part of the Record before the Third Circuit on the argument of the case. The Respondent had no opportunity to object to it as the Court regarded the petition without merit and promptly denied it.

In its petition, Petitioner has sought to justify its unorthodox and unauthorized procedure by arguing that the Third Circuit sitting in Philadelphia should take judicial notice of alleged "excerpts" of alleged "minutes" of the proceedings in the Surrogate's Court of New York (R. 28-29), which so far as we know were not even filed in that Court.

The Final Decree of the Surrogate constitutes, under the law of New York, a final, conclusive and determinative adjudication of the charges of alleged false claim, fraud, misrepresentation and bribery by the defendant and is *res judicata* of the charges which are repeated in substance in the complaint in this action (see Donnelly affidavit, D. 105-106a).

The Third Circuit cited as binding decisions of this Court on *res judicata* the following:

- Sealfon v. United States*, 332 U. S. 575 (Third Circuit, opinion, p. 17, note 48);
- Angel v. Bullington*, 330 U. S. 183 (Third Circuit, opinion p. 17, note 48);
- Heiser v. Woodruff*, 327 U. S. 726 (Third Circuit, opinion p. 17, note 48);

Treiners v. Sunshine Mining Co., 308 U. S. 66
 (Third Circuit, opinion p. 17, note 48);
Oriel v. Russell, 278 U. S. 358 (Third Circuit,
 opinion p. 17, note 48);
Meyers v. International Trust Co., 263 U. S. 64
 (Third Circuit, opinion p. 17, note 48);
Burt v. Union Central Life Insurance Co., 187 U. S.
 362 (Third Circuit, opinion p. 17, note 48).

The language of the Third Circuit was:

“We think, further, that the public policy of holding parties to one day in court is one which has recently found firm support and sound acceptance by the court whose authority binds us” (opinion, R. 16).

The decision of this Court in *Commissioner v. Sunnen*, 333 U. S. 591, cited by petitioner, is not in point. The *Sunnen* decision involved tax litigation concerning different tax years. This Court has made new rulings on applicable tax statutes between the first and second decisions of the Tax Court.

2. The Petitioner contends that the decision of the Second Circuit in *Rodiek v. Helvering*, *supra*, an estate tax case, is in conflict with the instant decision of the Third Circuit. There is no such conflict. In the later case of *United States v. Rodiek*, the Second Circuit expressly held the Tax Court and Second Circuit had not passed upon the question of the citizenship of Hackfeld in the tax case, whose decisions had been alleged to be *res judicata* on Hackfeld's citizenship. The Third Circuit held, in the *instant* case, that Surrogate Foley *had* passed on the identical issue raised in this case. The Second Circuit and the Third Circuit were in agreement in the two cases as to the

doctrine of law to be applied, but the difference in facts in each case led to different conclusions. Far from deciding contrary to any decision of the Second Circuit, as Petitioner alleges, the Third Circuit followed the Second Circuit in its interpretation of the power and jurisdiction of the Surrogate's Court of New York, citing *Griffith v. Bank of New York*, 147 F. 2d 899 (2d), cert. den. (325 U. S. 874) (R. 16).

3. The Third Circuit followed the applicable local law of New York. It made a careful examination of the New York law respecting the authority of the Surrogate's Court. It quoted the applicable statutes and cited the leading opinions of the Court of Appeals (R. 15-16).

It is manifest from the applicable sections of the Surrogate's Court Act and New York law quoted above in the Statement of the Case that the Surrogate's Court of New York had full and complete jurisdiction to try the fraud controversy between the Government and the defendant, who were before it on the judicial settlement of the executor's account and contesting that issue, and to judicially determine such issue.

Under the New York law, the charges of fraud, etc., contained in the objections were vital and, if proved, the Surrogate could have surcharged Silliman with the \$60,000 the Government was seeking to recover (D. 103a). Furthermore, under the Surrogate's Court Act, Section 40 (R. 15-16), the court had jurisdiction "to try and determine all questions, legal or equitable, arising between any and all parties to any proceeding, or between any party and any other person having any claim or interest therein who voluntarily appears in such proceeding * * * in order to make a full, equitable and complete disposition of the matter by such order or decree as justice requires * * *"

The early New York cases of *Curry v. Cowles*, 6 Bosworth 452 (N. Y. Super. Ct. 1860) and *Smith v. Hactor*, 51 Misc. 649 (App. Term 1906) cited by the Petitioner do not

deal with proceedings before the Surrogate's Court under the present Surrogate's Court Act, Section 40. The cited cases have never been cited by New York courts as establishing a rule of law. They do not touch upon the jurisdiction of the Surrogate's Court. They do not deal with a second contest of a determined issue between the same parties. In *Matter of Wellington*, 160 Misc. 383 (1936), Surrogate Foley points out the breadth of his jurisdiction and his full and complete powers with respect to attorneys practicing before his court. There can be no doubt under the New York law that the Surrogate had the power to determine the fraud issue in connection with the Petitioner's attempt to enlarge its recovery in that court by seeking to obtain a judgment of some \$60,000 against Silliman for alleged fraud upon the Government, the very party allegedly damaged by the alleged fraud in both cases. Here was no incidental or collateral issue. It was an issue submitted to the Surrogate for determination by two parties who had voluntarily appeared in the accounting proceeding. It was the nub of the trial before the Surrogate, as the Third Circuit points out (R. 17).

4. The Third Circuit followed the applicable decisions of this Court in holding that the District Court must give "full faith and credit" to the decree. The Court first pointed out that this was an additional ground for its decision. It then quoted Section 80 of the Surrogate's Court Act (Surrogate's Court Act, L. 1920 Ch. 928, as amended L. 1938 Ch. 157, Section 80), as follows:

"Every decree of the Surrogate's Court is conclusive as to all matters embraced therein against every person of whom jurisdiction was obtained. To such decree there is attached all the presumptions pertaining to a judgment rendered by a court of general jurisdiction in a common law action" (R. 18).

After quoting the section, the opinion cites numerous New York cases, all substantiating that the decree of the Surrogate's Court would have been followed in *any* court in New York as *res judicata*. The opinion concludes by saying that the "full faith and credit" clause compels the District Court to give the same effect to it as the courts of New York would, and that "This consideration ends the plaintiff's case" (R. 19).

In this, the Third Circuit was following the applicable decisions of this Court in *Riley v. New York Trust Co.*, 315 U. S. 343, 349. Additional cases are *Roche v. McDonald*, 275 U. S. 449, 451; *Christmas v. Russell*, 5 Wall. 290, 302 and *Fauntleroy v. Lum*, 210 U. S. 230, 236.

CONCLUSION

Res judicata is an essential ingredient of the judicial process. Public policy dictates that there be an end of litigation; that those who have raised a question which has, in conformity to local law, been determined adversely to them shall be bound by the result of the contest and that matters once determined shall be considered forever settled as between those parties. *Baldwin v. Iowa State Traveling Men's Association*, 283 U. S. 525. See also *So. Pacific R. R. Co. v. U. S.*, 168 U. S. 48.

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